

AO 91 (Rev. 08/09) Criminal Complaint

FILED

UNITED STATES DISTRICT COURT

ALBUQUERQUE, NEW MEXICO

for the
District of New MexicoNOV 09 2016 *er*

United States of America)

v.)

Guy Rosenschein)

Case No.)

MATTHEW J. DYKMAN
CLERK_____
*Defendant(s)**16mj 41060***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 11/08/2016 in the county of Bernalillo in the
District of New Mexico, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 U.S.C. Sec. 2252(a)(2)	Distribution of child pornography
18 U.S.C. Sec. 2252(a)(4)(B)	Possession of child pornography

This criminal complaint is based on these facts:

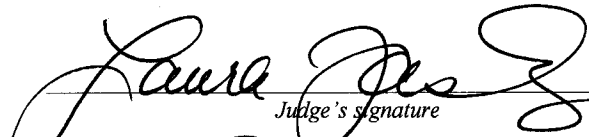
See attached affidavit

☒ Continued on the attached sheet.

*Complainant's signature*Ross Zuercher, Special Agent - FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 11/09/2016City and state: Albuquerque, New Mexico

Judge's signature
Laura Fasching, U.S. Magistrate

Printed name and title
Judge

AFFIDAVIT

Your Affiant, Ross Zuercher, having been duly sworn, does hereby depose and say:

Introduction

1. I have been a Special Agent (SA) of the Federal Bureau of Investigation (FBI), United States Department of Justice, since August 2012. As such, I am a “federal law enforcement officer” within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request arrest warrants. I am currently assigned to the FBI’s Albuquerque Violent Crime Program, as such, I am authorized to investigate crimes against children. The information set forth in this affidavit was derived from my own investigation and/or communicated to me by other sworn law enforcement officers of the FBI, and the Bernalillo County Sheriff’s Office (BCSO). Because this affidavit is submitted for the limited purpose of securing an arrest warrant, your Affiant has not included each and every fact known to me concerning this investigation. Your Affiant has set forth only those facts that your Affiant believes are necessary to establish that probable cause to support a criminal complaint against Guy Rosenschein in violation of Title 18 U.S.C. §§ 2252(a)(2) and (a)(4)(B).

Relevant Statutes

2. This investigation concerns alleged violations of certain activities relating to material involving the sexual exploitation of minors; Title 18 U.S.C. §§ 2252(a)(2) and (a)(4)(B).
 - a. 18 U.S.C. § 2252(a)(2) and (b)(1), provide, in relevant part, that any person who knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been transported in or affecting interstate or foreign commerce, or which contains materials that have been transported in or affecting interstate or foreign commerce, by any means including by computer or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct, or any person who attempts to do so, shall be guilty of a federal offense. Title 18, United States Code, Sections 2252A(a)(2) and (b)(1) provide, in relevant part, that any person who knowingly receives or distributes any child pornography or any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce transported in or affecting interstate or foreign commerce by any means, including by computer, or any person who attempts to do so, shall be guilty of a federal offense.

- b. 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2) provide, in relevant part, that any person who knowingly possesses, or knowingly accesses with intent to view any visual depiction that has been transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been so transported, by any means including by computer, if the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct, or any person who attempts to do so, shall be guilty of a federal offense. Title 18, United States Code, Section 2252A(a)(5)(B) and (b)(2) provide, in relevant part, that any person who knowingly possesses, or knowingly accesses with intent to view, any material that contains an image of child pornography that has been transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been transported in or affecting interstate or foreign commerce by any means, including by computer, or any person who attempts to do so, shall be guilty of a federal offense.
- c. The term “child pornography” is defined at 18 U.S.C. § 2256(8). It consists of visual depiction of sexually explicit conduct where (a) the production of the visual depiction involved the use of a minor engaged in sexually explicit conduct, (b) the visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaged in sexually explicit conduct, or (c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaged in sexually explicit conduct), as well as any visual depiction, the production of which involves the use of a minor engaged in sexually explicit conduct. *See* 18 U.S.C. §§ 2252 and 2256(2), (8).
- d. The term “sexually explicit conduct” is defined at 18 U.S.C. § 2256(2) and consists of actual or simulated (a) sexual intercourse, including genital-genital, oral-genital, or oral-anal, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the genitals or pubic area of any persons. *See* 18 U.S.C. § 2256(2).
- e. The term “minor” means any person under the age of eighteen years. *See* 18 U.S.C. § 2256(1).

Technical Terminology

3. Chat room – A chat room is an area on the Internet or other computer network where users can communicate via text, and sometimes via video and photographs.
4. Internet Protocol (IP) address - An unique identifier tied to every internet account in the world, and is how internet traffic finds its destination. IP addresses are managed by internet service providers (ISPs), like Comcast or CenturyLink, and those ISPs assign their customers an IP address when they activate their account. When law enforcement identifies an IP address during the course of an investigation, they can serve legal process on the ISP to obtain a physical address that the IP belongs to.

Details of the Investigation

5. On November 8, 2016, the FBI received a report from BCSO regarding Guy Rosenschein (ROSENSCHEIN). According to the report, ROSENSCHEIN had knowingly possessed and distributed child pornography to include photographs of prepubescent children.
6. Chatstep.com is a United States company that runs a website located on the Internet. The website allows visitors to look at “Public” chat rooms and join them. The public chat rooms are required to have usernames created by the visitors. Up to 50 users can be in a chat room at the same time. A user can enter a preexisting public chat room, or create a new chat room. The rooms can be private or public to other users. Once in a chat room of more than 2 users, a user can send a personal message to just one user to have private, one-on-one conversations.
7. On July 31, 2016, Chatstep.com reported a user, “Carlo,” who uploaded an image of child pornography and sent it to another user. The IP address used in the upload was 75.173.104.251. Chatstep.com provided the photograph that was uploaded. BCSO Detective Kyle Hartsock reviewed the image which depicts a child under 18 years of age involved in a sex act. A grand jury subpoena was served on the Internet Service Provider who owns the IP address. The subpoena asked the provider for the subscriber information of the IP address at the exact date and time of the upload. The service provider returned with the subscriber results that indicated a user identification as rosenscheinguy, and a physical address of Rosenschein, Guy, 1529 Archuleta Drive NE, Albuquerque, New Mexico.
8. On August 8, 2016, Chatstep.com reported a user, “Carlo,” who uploaded an image of child pornography and sent it to another user. The IP address used in the upload was 75.173.102.112. Chatstep.com provided the photograph that was uploaded. BCSO Detective Kyle Hartsock reviewed the image which depicts a child under 18 years of age involved in a sex act. A grand jury subpoena was served on the Internet Service Provider who owns the IP address. The subpoena asked the provider for the subscriber information of the IP address at the exact date and time of the upload. The service provider returned with the subscriber results that indicated a user identification as rosenscheinguy, and a physical address of Rosenschein, Guy, 1529 Archuleta Drive NE, Albuquerque, New Mexico.

9. On November 7, 2016 Detective Hartsock secured a search warrant from the District Court of New Mexico for the residence of 1529 Archuleta Drive NE, Albuquerque, New Mexico 87112.
10. On November 8, 2016, the search warrant was executed at 1529 Archuleta Drive NE, Albuquerque, New Mexico 87112. During the execution of the search warrant, ROSENSCHEIN was observed in a bath robe inside his residence. Upon making contact with the officers and detectives of BCSO, ROSENSCHEIN ran back towards his bedroom on the second floor of the residence, and armed himself with a firearm. After a brief time, ROSENSCHEIN surrendered peacefully. When asked who else was in the residence, ROSENSCHEIN stated his "nephew." Upon conducting a security sweep, a 16 year old male, John Doe, was found in the bed where ROSENSCHEIN had fled to. John Doe was only wearing boxer shorts underwear. John Doe was subsequently identified as not related to ROSENSCHEIN.
11. During the search several items of evidence were seized, including a 16 gigabyte Transcend thumb drive. The thumb drive was previewed on scene revealing multiple images of child pornography.
12. ROSENSCHEIN was later interviewed. During the interview, ROSENSCHEIN indicated that he was employed at Presbyterian Hospital as a pediatric surgeon specializing in urology. He indicated he has lived in Albuquerque for approximately three years, and John Doe was a former patient of his whom ROSENSCHEIN performed at least two operations on. ROSENSCHEIN allows John Doe to stay at his house, often overnight, but denied any sexual relationship with John Doe. ROSENSCHEIN owns two airplanes and a helicopter and has flown John Doe to Florida, Nevada, and Arkansas for vacations. ROSENSCHEIN also stated he flew another boy, who was a former patient of his, around the Albuquerque area.
13. ROSENSCHEIN stated he is familiar with chatstep.com and has used it often, including just last week. He said that he has used "Carlo" as a username before. He also stated that he traded naked images of people while using chatstep.com, but was not sure if he ever sent photographs of children engaged in sexual acts. When confronted about the thumb drive, ROSENSCHEIN admitted to having possessed the images found on the thumb drive for several years, and acquired them while traveling in Europe. He brought them back to the United States and continued possession of them.
14. ROSENSCHEIN was arrested by Detective Hartsock for violations of New Mexico Statutes Annotated (1978) 30-6A-3C and 30-6A-3B, specifically the possession and distribution of child pornography.

Interstate Nexus

15. According to 18 U.S.C. §§ 2252(a)(2) and (a)(4)(B), interstate or foreign commerce must be affected. The thumb drive that was utilized to store and access the child pornography was a Transcend 16GB USB 2.0. Though this particular model's country of origin has not been definitely identified, Your Affiant knows, that Transcend only has manufacturing facilities in Taiwan and China. Your Affiant believes that because the thumb drive was manufactured outside of the United States, interstate commerce has been affected in the commission of this offense.

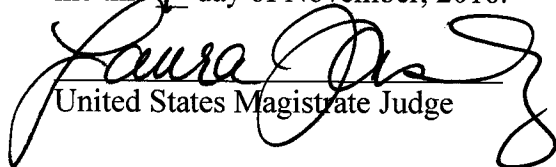
Conclusion

16. Based on all of the above information, your Affiant submits there is probable cause to believe that GUY ROSENSCHEIN, violated 18 U.S.C. §§ 2252(a)(2) and (a)(4)(B). Your Affiant requests an arrest warrant based upon the criminal complaint in this matter.
17. Assistant United States Attorney Jonathan Gerson has authorized federal prosecution in this matter.
18. I swear that this information is true and correct to the best of my knowledge.



Ross Zuercher, Special Agent - FBI

SUBSCRIBED and SWORN to before
me this 9th day of November, 2016.



United States Magistrate Judge